IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Bail Appl..No. 4924 of 2007()

CRIME NO. 358/05 OF VIZHINJAM POLICE STATION

PETITIONER/ACCUSED

JOSE, S/O. VARKEY, AGED 40 YEARS,
ARACKAL HOUSE, KOZHIPPILLY P.O.,
KOTHAMANGALAM, ERNAKULAM DISTRICT.

BY ADV. SRI.ALEXANDER JOSEPH

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REP. BY
THE DIRECTOR GENERAL OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE CIRCLE INSPECTOR OF POLICE,
VIZHINJAM POLICE STATION, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.A.No. 5062 of 2007

in

B.A.No. 4924 of 2007

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Dated this the 24th day of August, 2007

O R D E R

The learned counsel for the petitioner prays, the learned Prosecutor does not oppose the said prayer and I am satisfied in the facts and circumstances narrated in the petition that the schedule for appearance fixed for the petitioner as per order dt. 20.8.2007 in B.A. 4924 of 2007 can be re-fixed.

2. This petition is accordingly allowed. The dates 30.8.07, 31.8.07 and 1.9.07 appearing in paragraph 5(2) of the order dt.20.8.2007 in the above application shall now stand modified and corrected as 1.9.07, 2.9.07 and 3.9.2007 respectively.

(R. BASANT)
Judge

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R. BASANT, J.

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B.A.No. 4924 of 2007

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Dated this the 20th day of August, 2007

O R D E R

Application for anticipatory bail. The petitioner is the sixth accused in a crime, which is being investigated by the police. Such investigation is being conducted/continued in pursuance of the directions issued by this Court on 1.12.2006 in Crl.M.C. No. 4209 of 2005. Investigation is in progress. The petitioner apprehends imminent arrest in Crime No. 358 of 2005.

2. The crux of the allegations in that crime is that cheque leaves of the defacto complainant were taken away stealthily by the principal accused, who, in turn, handed over such cheque leaves to various persons and such persons claiming to be payees under the cheques from the defacto complainant staked claims under Section 138 of the N.I. Act. The petitioner is one such person/payee under the cheque, which cheque was allegedly thieved from the possession of the defacto complainant. Such cheque is issued by the company, of which the defacto complainant is the Managing Director. The petitioner had initiated prosecution under Section

138 of the N.I. Act.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has no part to play in the disputes between the brothers i.e. the defacto complainant, A1 and A3. He is only a payee under one of the cheques. According to him, he has already withdrawn the prosecution under Section 138 of the N.I. Act because he had received the amount due under the cheque. Whatever that be, the petitioner is not now prosecuting the case under Section 138 of the Act. The petitioner in these circumstances prays that anticipatory bail may be granted to him. He has no role to play in the alleged theft. Even the allegation is only that the alleged cheque was presented by him showing his name as the payee.

4. Notice was given to the learned Prosecutor. The learned Prosecutor does not oppose the application. Learned counsel, Sri.Praveen K. Jose, has made submissions on behalf of the defacto complainant. The learned counsel submits that for a proper investigation it is necessary that the petitioner has to be interrogated thoroughly to ascertain the manner in which the alleged theft had been conducted. I am satisfied in the circumstances, to which I have made brief reference above, that the petitioner can be granted anticipatory bail. Appropriate conditions can, of

course, be imposed which shall ensure a fair, efficient and expeditious investigation. Arrest and detention of the petitioner is not necessary in the facts and circumstances of this case. Essentially and basically the dispute is between the three brothers in the running of a company. The petitioner only claims to be a payee under one cheque, the dispute under which has already been resolved and the petitioner has withdrawn the said prosecution also.

5. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 30.8.2007 at 11 a.m. The learned Magistrate shall release the petitioner on regular bail on condition that he executes a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 31.8.2007 and 1.9.2007 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 30.8.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(d) If the petitioner were arrested prior to his surrender on 30.8.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.50,000/- without any surety undertaking to appear before the learned Magistrate on 30.8.2007.

(R. BASANT)
Judge

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